

## **RE: regulatory regime for crowd sourced equity funding**

Thank you for the opportunity to respond to the discussion paper on crowd sourced equity funding (CSEF).

My role as NSW Small Business Commissioner is to advocate on behalf of and support small business by:

- Providing dispute resolution services;
- Delivering quality business advice through the Small Biz Connect program; and
- Speaking up for small business within government.

Small businesses represent 96 per cent of all businesses in NSW. There are an estimated 680,000 small businesses which employ nearly 50 per cent of the State's workforce.

Access to finance is a significant issue for start-ups and small businesses. According to Australian Bureau of Statistics data, access to finance is the number one barrier to innovation for Australian businesses and the third largest barrier to general business activity.<sup>1</sup>

Research carried out by Deloitte Access Economics estimates that about 10 percent of Australian SMEs – or around 200,000 businesses – have difficulties accessing finance.<sup>2</sup>

Furthermore, NSW Business Chamber survey results show that 30 percent of businesses surveyed perceived that they had missed an opportunity in the two years to July 2012 due to a lack of credit, and 50 percent of those who had loans applications rejected reported that it significantly constrained their growth.<sup>3</sup>

Moreover, NSW Business Chamber survey results indicated that 20 percent of businesses who had loans rejected had to lay off staff or saw their chances of bankruptcy significantly increase.

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<sup>1</sup> ABS Catalogue 8167.0 - *Selected Characteristics of Australian Business, 2011-12*

<sup>2</sup> Deloitte Access Economics and Professor Marc Cowling for the NSW Business Chamber, *Small Business Access to Finance*, 2013, p.7

<sup>3</sup> Deloitte Access Economics and Professor Marc Cowling for the NSW Business Chamber, *Small Business Access to Finance*, 2013, p.9

Given the importance of start-ups and small businesses to the overall economy, difficulty in accessing finance thus has the potential to significantly curtail economic growth, investment and employment.

I believe that CSEF has the potential to be a valuable complementary source of capital to the traditional providers in the market, offering finance to businesses currently struggling to source investment.

CSEF is a relatively new and evolving form of capital raising. Broadly, it refers to schemes through which a business seeks to raise funding, particularly early-stage funding, through offering debt or equity interests in the business to investors online. Businesses seeking to raise capital through CSEF typically advertise online through a crowd funding platform website, which serves as an intermediary between investors and the business.

CSEF is currently possible under the existing Small Scale Offerings of Managed Investment and Other Prescribed Financial Products Exemption (Section 1012E of the *Corporations Act 2001*). However, in order for CSEF to fully develop in Australia, some changes to the regulatory regime are required.

A key priority should be to cultivate CSEF as a vehicle for economic growth and innovation, with appropriate protection for investors, without creating excessive compliance and administrative burdens for businesses.

To this end, I believe that the following points are essential components of an optimal regulatory regime for CSEF in Australia (these are expanded on in the table on page 4 of this submission):

- Businesses should be allowed to raise up to \$5 million per annum through CSEF;
- Crowdsourced equity funding offerings should be permitted to be advertised, albeit in a limited fashion;
- Unaccredited investors should be permitted to participate in crowdsourced equity funding offerings;
- Proprietary limited firms should be permitted to make crowdsourced equity funding offerings;
- There should be no restrictions on the type of issuer, in contrast to the situation in Italy for example, where CSEF is limited to “innovative start-ups”;
- There should be no ban on secondary markets;
- Attempts should be made to educate investors in order to minimise risk;

- The restriction on the number of investors should be raised from the current 20 in any 12 month period, contained in the small scale personal offers exemption, to 100;
- There should be a 10 day cooling off period;
- A transparent, mandatory code of conduct should be established; and
- Research on CSEF (and crowdfunding generally) should be encouraged.

I also advocate that a new, standalone legislative regime for the regulation of CSEF in Australia should be implemented.

However, irrespective of which option for the regulatory arrangements for CSEF is adopted by CAMAC, it is essential that excessive compliance and administrative costs are not imposed. For example, onerous licensing requirements for intermediaries and excessive disclosure requirements for companies utilising CSEF would be counter-productive and must not be imposed.

This is as important as the actual architecture of the regulatory arrangements adopted, such as broadening the current small scale personal offers exemption or a standalone structure.

Should you wish to discuss any of the issues raised in this submission further please contact Adam Spivakovsky, Senior Policy Adviser, on (02) 8222 4833.

Yours sincerely,

Yasmin King  
**NSW Small Business Commissioner**



Question	Commentary	NSW Small Business Commissioner's recommendation
<p><b>Question 1</b> In principle, should any provision be made in the corporations legislation to accommodate or facilitate CSEF. If so, why, if not, why?</p>	<p>In principle, provision should be made in the corporations legislation to facilitate and foster CSEF.</p> <p>As stated on the first two pages of this submission, access to finance is a significant issue for start-ups and small businesses. According to Australian Bureau of Statistics data, access to finance is the number one barrier to innovation for Australian businesses and the third largest barrier to general business activity.<sup>4</sup></p> <p>Research carried out by Deloitte Access Economics estimates that about 10 percent of Australian SMEs – or around 200,000 businesses – have difficulties accessing finance.<sup>5</sup></p> <p>NSW Business Chamber survey results show that 30 percent of businesses surveyed perceived that they had missed an opportunity in the two years to July 2012 due to a lack of credit and 50 percent of those who had loans applications rejected reported that it significantly constrained their growth.<sup>6</sup></p> <p>Moreover, NSW Business Chamber survey results indicated that 20 percent of businesses who had loans rejected had to lay off staff or</p>	<ul style="list-style-type: none"> <li>• In principle, provision should be made in the corporations legislation to facilitate and foster CSEF.</li> </ul>

<sup>4</sup> ABS Catalogue 8167.0 - *Selected Characteristics of Australian Business, 2011-12*

<sup>5</sup> Deloitte Access Economics and Professor Marc Cowling for the NSW Business Chamber, *Small Business Access to Finance*, 2013, p.7

<sup>6</sup> Deloitte Access Economics and Professor Marc Cowling for the NSW Business Chamber, *Small Business Access to Finance*, 2013, p.9

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	<p>saw their chances of bankruptcy significantly increase.</p> <p>Given the importance of start-ups and small businesses to the overall economy, difficulty in accessing finance thus has the potential to curtail economic growth, investment and employment.</p> <p>Additionally, many small business owners borrow against the value of their homes in order to get their business off the ground. According to the Australian Bankers' Association and Council of Small Business Australia's report <i>Small Businesses: Access to Finance Report Year to March 2013</i>, an estimated 49,644 small businesses use their residential mortgage to fund their small business.</p> <p>With rates home ownership lower for Gen Y, this option may be less viable in future years, further constraining access to finance by start-ups and small businesses.</p> <p>In this context, equity crowdfunding has the potential to be a valuable complementary source of capital to the traditional providers in the market, offering finance to businesses currently struggling to source investment.</p> <p>One such cohort of businesses is those seeking investment in "equity gaps" where it is difficult to secure finance from traditional risk capital providers. Another is businesses that do not fit the high-risk, high-return profile served by many traditional risk finance providers.</p>	

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	<p>These businesses may not have the potential to deliver the exceptional returns that venture capitalists seek, however they may also be less risky and still provide significant value to the economy.</p> <p>While crowdfunding offers new investment opportunities to individuals and corporate investors, it also offers recipients of funding the ability to diversify their sources of funding. This lowers their funding risk and creates value for the system as a whole, again making the business less prone to funding shortages, therefore allowing them to better pool resources on significant business opportunities.</p> <p>Besides raising money, crowdfunding allows the project owner to gain feedback on some of the most critical parts of the product before its release into the public marketplace. For example, the project owner is able to gauge pricing information, demand for the product, feedback on how design might be improved, demographic information on potential buyers, precise information about market demands, and direct customer interaction.</p> <p>It can also lead to word-of-mouth recommendation and other social marketing. For the project owner, crowdfunding establishes a direct link between the business and the customer.</p> <p>Crowdfunding is an extremely effective way of gauging if their product or idea has a mass appeal. Even more important is the time in which the project owner is able to make this assessment; a two-month long crowdfunding campaign is a relatively fast turnaround for getting an idea off the ground.</p>	

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	<p>For project owners who experienced a successful crowdfunding campaign for their first round of financing, the aforementioned benefits can be extremely useful for a second round of financing from more traditional sources, such as venture capital or business angel investing, if this is necessary.</p> <p>For these reasons, CSEF in Australia should be supported and facilitated.</p>	
<p><b>Question 2</b> Should any such provision:</p> <p>(i) take the form of some variation of the small scale offering exemption and/or</p> <p>(ii) confine CSEF to sophisticated, experienced and professional investors? If so, what, if any, change should be made to the test of a sophisticated investor in this context, or</p> <p>(iii) adopt some other approach</p>	<p>The fifth option outlined in the Discussion Paper involves the creation of a new, possibly standalone regime for the regulation of CSEF. This regime would provide benefits for CSEF including:</p> <ul style="list-style-type: none"> <li>• Clarity in the laws and regulations that apply specifically to CSEF;</li> <li>• The ability to make future specific regulatory changes to CSEF laws and avoid any adverse impacts on existing laws for other regulated financial products and securities;</li> <li>• The ability to control the activities of Australian CSEF investors, issuers and intermediaries and determine investor protection measures to be implemented between these parties; and</li> <li>• The ability to collect data on CSEF in Australia and allow for data analysis to measure risk, sector growth, and to allow for better informed and targeted law reform in this rapidly changing area.</li> </ul>	<ul style="list-style-type: none"> <li>• CAMAC should recommend to Government the creation of a new, possibly standalone legislative regime for the regulation of CSEF.</li> <li>• It is essential that excessive compliance and administrative costs are not imposed.</li> <li>• Unaccredited investors should be permitted to participate in crowdsourced equity funding offerings, provided an adequate framework to manage</li> </ul>

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	<p>I would therefore advocate that this is the option that CAMAC should recommend to Government.</p> <p>However, irrespective of which option for the regulatory arrangements for CSEF is adopted, is essential that excessive compliance and administrative costs are not imposed. For example, onerous licensing requirements for intermediaries and excessive disclosure requirements for companies utilising CSEF would be counter-productive and should not be imposed.</p> <p>This is of equal importance as the architecture of the regulatory arrangements, such as broadening the current small scale personal offers exemption or a self-contained statutory and compliance structure.</p> <p>Unaccredited investors should be permitted to participate in crowdsourced equity funding offerings. In other words, CSEF should not be restricted to professional or sophisticated investors.</p> <p>While platforms that only allow accredited investors to participate are a useful addition to the innovation system, they do not tap new pools of capital for investment in innovation.</p> <p>Allowing non-accredited investors to participate in CSEF will increase the total pool of funds available for borrowing by SMEs, and thus facilitate the diversification of funding options for businesses.</p> <p>However, unaccredited investors should be protected. This might</p>	<p>their risk is in place.</p> <ul style="list-style-type: none"> <li>• However, unaccredited investors should be protected. This might be achieved via a restriction that they only invest a certain percentage of their income in a given year through CSEF. There might be an exemption from this restriction for high net worth individuals.</li> <li>• Alternatively, a dollar limit upper threshold (for example \$10,000), on investments by any one individual, could be applied to unaccredited investors. The final form the limit might take should be established in consultation with stakeholders.</li> </ul>

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	<p>be done via the implementation of a restriction that they only invest a certain percentage of their income in a given year through crowdsourced equity funding. There might be an exemption from this restriction for very high net worth individuals.</p> <p>For close relatives, a higher percentage might apply, as these often invest a greater amount than other investors and are not just driven by commercial considerations.</p> <p>Unaccredited investors should be required to provide a verified statement that they are only investing an amount below the specified threshold. It should not be up to intermediaries to enforce this requirement, as this would unnecessarily increase red tape for intermediaries. In other words, the onus should be on the unaccredited investor (or possibly the government regulator) to comply with this restriction.</p> <p>Alternatively, a dollar limit upper threshold (for example \$10,000), on investments by any one individual, could be applied to unaccredited investors. The final form the limit might take should be established in consultation with stakeholders.</p>	
<p><b>Question 3</b> In the CSEF context, what changes, if any, should be made, and for what reasons, to the regulation of:</p> <p>(i) proprietary companies</p> <p>(ii) public companies</p> <p>(iii) managed investment schemes. In</p>	<p>Proprietary limited firms should be permitted to make crowdsourced equity funding offerings.</p> <p>However, there should be a higher level of investor protection for these firms. This is due to the fact that proprietary limited firms are not subject to less restrictions regarding account keeping, share transfers and consulting shareholders regarding the running of the</p>	<ul style="list-style-type: none"> <li>Proprietary limited firms should be permitted to make crowdsourced equity funding offerings.</li> </ul>

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<p>considering (c), should the disclosure obligations of issuers to investors differ, in principle, if investors are investing directly (as equity holders in the issuer) or indirectly (through acquiring an interest in a managed investment scheme) and if so, how and why?</p>	<p>business.</p>	
<p><b>Question 4</b> What provision, if any, should be made for each of the following matters as they concern CSEF issuers:</p> <p>(i) types of issuer: should there be restrictions on the classes of issuers permitted to employ CSEF (for instance, investment companies are excluded from the CSEF provisions of the US JOBS Act. In Italy, CSEF is confined to designated 'innovative start-ups')</p> <p>(ii) types of permitted securities: what classes of securities of the issuer should be able to be offered through CSEF</p> <p>(iii) maximum funds that an issuer may raise: should there be a ceiling, and if so what, on the funds that can be raised by each issuer in a particular period through CSEF. Should that ceiling include any funds raised under the small scale personal offers exemption</p>	<p>There should not be any restriction with regards to the classes of issuers permitted to utilise CSEF. For example, the Italian regulatory regime restricts CSEF to firms that are "innovative start-ups". Firms that are not in a fashionable niche still may have the capacity to generate innovation, employment and economic growth. There is also the problem of defining exactly which firms qualify under such criteria and which do not.</p> <p>I do not have a fixed view with regards to the types of securities that should be permitted, however small businesses sometimes find securities such as hybrid shares difficult to understand in regards to their obligations to the holders of these securities.</p> <p>Businesses should be allowed to raise up to \$5 million per annum through CSEF. A lower ceiling, of for example \$2 million, would be almost insufficient to make the exercise worthwhile for businesses. Moreover, ASIC already currently permits a limit of \$5 million per offering in some circumstances (where a class order exemption is in place).</p> <p>There should not be a ban on secondary markets. I can see no</p>	<ul style="list-style-type: none"> <li>• There should not be restriction with regards to the classes of issuers permitted.</li> <li>• Businesses should be allowed to raise up to \$5 million per annum through CSEF.</li> <li>• There should not be a ban on secondary markets.</li> <li>• Crowdsourced equity funding offerings should be permitted to be advertised, albeit in a limited fashion.</li> <li>• It is essential that disclosure and licensing requirements on</li> </ul>

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<p>(iv) disclosure by the issuer to investors: what disclosures should issuers have to provide to investors</p> <p>(v) controls on advertising by the issuer: what controls, if any, should there be on advertising by an issuer</p> <p>(vi) liability of issuers: in what circumstances should the directors or controllers of the issuer have liability in relation to CSEF. What defences to liability should apply</p> <p>(vii) ban on a secondary market: should CSEF be limited to new issues, excluding on-selling of existing securities</p> <p>(viii) any other matter?</p>	<p>rationale why such a ban should be put in place.</p> <p>Disclosure obligations should be those currently obtaining under the Corporations Act. The existing legislation is adequate. It is essential that disclosure requirements on businesses do not become too onerous, as this has the potential to hamper the development of CSEF in Australia.</p> <p>It might be beneficial to require businesses to communicate with shareholders they have acquired through CSEF every few months or so, for example through bimonthly automated emails.</p> <p>Crowdsourced equity funding offerings should be permitted to be advertised, albeit in a limited fashion. I would advocate that advertising for CSEF be limited to portals/ intermediaries and trade journals (online or in print). CSEF offerings should not be advertised in the mainstream media, as this may attract investors who would not otherwise have invested in CSEF. These investors may be swayed by the advertising and may be more likely to have unrealistic expectations in relation to the potential risks and rewards of such investments.</p> <p>In relation to liability of directors, the existing provisions of the Corporations Act should apply.</p>	<p>businesses do not become too onerous, as this definitely has the potential to hamper the development of CSEF in Australia.</p> <ul style="list-style-type: none"> <li>• In relation to liability of directors, the existing provisions of the Corporations Act should apply.</li> </ul>
<p><b>Question 5</b> In the CSEF context, what changes, if any, should be made, and for what reasons, to the current licensing requirements applicable to</p>	<p>Provided intermediaries are not giving financial advice, they should only be required to register with the relevant government regulator and not take out a financial services licence.</p>	<ul style="list-style-type: none"> <li>• Provided intermediaries are not giving financial advice, they should only</li> </ul>

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intermediaries?	<p>This reflects the current requirements under corporations law. I see no reason why this should be altered. Requiring intermediaries to take out for example a financial services licence would be a significant impost and this might hamper the development of CSEF in Australia.</p> <p>However, intermediaries should be subject to a mandatory, transparent code of conduct, which should be developed in consultation with industry.</p> <p>This code of conduct which should be clearly communicated to stakeholders and the broader public. The establishment of a code of conduct in the initial stage of CSEF in Australia will have a positive and stabilising input on the future of the industry. This might include the creation of transparent reporting guidelines and generic documentation.</p> <p>It should also address issues such as customer protection and contain reasonable and fair guidelines relating to the financial interest, exposure and diversification of funders and investees across multiple crowdfunding business models. This needs to provide guidance around fraud, risk explanations and potentially the testing of funders' knowledge. Customer identification is a key issue with both projects and funders; this includes know-your-customer, customer due diligence procedures and anti-money laundering aspects. The industry needs to create a relevant dialog and approval processes for best practices for customer due diligence.</p>	be required to register with the relevant government regulator and not take out a financial services licence.

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<p><b>Question 6</b> What provision, if any, should be made for each of the following matters as they concern CSEF intermediaries:</p> <p>(i) permitted types of intermediary (also relevant to Question 5):</p> <p>(a) should CSEF intermediaries be required to be registered/licensed in some manner</p> <p>(b) what financial, human, technology and risk management capabilities should an intermediary have for carrying out its role</p> <p>(c) what fair, orderly and transparent processes must the intermediary be required to have for its online platform</p> <p>(d) should an intermediary be required to have an internal dispute resolution and be a member of an external dispute body, such as the Financial Services Ombudsman</p> <p>(ii) intermediary matters related to issuers: these matters include:</p> <p>(a) what, if any, projects and/or issuers should intermediaries not</p>	<p>Intermediaries should be required to register with the relevant government regulator, and to abide by a transparent code of conduct which should be developed in consultation with industry (see comments at Question 5).</p> <p>However, it is essential that excessive compliance and administrative costs are not imposed. For example, onerous licensing requirements for intermediaries and excessive disclosure requirements for companies utilising CSEF would be counter productive and must not be imposed.</p> <p>As previously stated, intermediaries who do not provide financial advice should not be required to take out a financial service licence. This is preferable, as if intermediaries provide advice and therefore are required to be licensed, this will push up the costs involved in CSEF, for example due to the need for intermediaries to take out liability insurance.</p> <p>Intermediaries should be required to conduct reasonable due diligence with regards to the bona fides of firms seeking to attract funding through CSEF. For example, they should ensure that the issuer's lodgements are in order and up to date.</p> <p>Intermediaries should only be held liable for investor losses resulting from misleading statements from issues made on their websites / their websites being used to defraud investors if they have not performed reasonable due diligence on the business and / or have deliberately set out to mislead investors themselves. This is all that they can reasonably be expected to do. The mandatory</p>	<ul style="list-style-type: none"> <li>• Intermediaries should be required to register with the relevant government regulator, and to abide by a transparent code of conduct which should be developed.</li> <li>• However, it is essential that excessive compliance and administrative costs are not imposed.</li> <li>• Intermediaries should only be held liable for investor losses resulting from misleading statements from issues made on their websites / their websites being used to defraud investors if they have not performed reasonable due diligence on the business and / or have deliberately set out to mislead investors</li> </ul>

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<p>permit to raise funds through CSEF</p> <p>(b) what preliminary/ongoing due diligence checks should intermediaries be required to conduct on issuers and their management</p> <p>(c) what preliminary/ongoing due diligence checks should intermediaries be required to conduct on the business conducted by issuers</p> <p>(d) to what extent should intermediaries be held liable for investor losses resulting from misleading statements from issuers made on their websites</p> <p>(e) to what extent should intermediaries be held liable for investor losses resulting from their websites being used to defraud investors</p> <p>(f) what possible conflict of interest/self-dealing situations may arise between issuers and intermediaries (including intermediaries having a financial interest in an issuer or being remunerated according to the amount of funds raised for issuers through their funding portal), and how these situations might best be dealt with</p>	<p>code of conduct should be a guide in this regard.</p> <p>Intermediaries should be required to make disclosures with regards to risk and other disclosures as per the current requirements of the Corporations Law.</p>	<p>themselves.</p> <ul style="list-style-type: none"> <li>• Intermediaries should be required to make disclosures with regards to risk and other disclosures as per the current requirements of the Corporations Law.</li> </ul>

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<p>(g) what controls should be placed on issuers having access to funds raised through a CSEF portal</p> <p>(iii) intermediary matters related to investors: these matters include:</p> <p>(a) what, if any, screening or vetting should intermediaries conduct on investors</p> <p>(b) what risk and other disclosures should intermediaries be required to make to investors</p> <p>(c) what measures should intermediaries be required to make to ensure that any investment limits are not breached what controls should be placed on intermediaries offering investment advice to investors</p> <p>(e) should controls be placed on intermediaries soliciting transactions on their websites</p> <p>(f) what controls should there be on intermediaries holding or managing investor funds</p> <p>(g) what facilities should intermediaries be required to provide to allow investors to communicate with</p>		

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<p>issuers and with each other</p> <p>(h) what disclosure should be made to investors about being able to make complaints against the intermediary, and the intermediary's liability insurance in respect of the role as an intermediary</p> <p>(i) what disclosure should be made about the commission and other fees that intermediaries may collect from funds raised</p> <p>(j) what, if any, additional services should intermediaries provide to enhance investor protection</p> <p>(iv) any other matter?</p>		
<p>Question 7 In the CSEF context, what provision, if any, should be made for investors to be made aware of:</p> <p>(i) the differences between share and debt securities</p> <p>(ii) the difference between legal and beneficial interests in shares</p> <p>(iii) any classes of shares in the issuer and its implications for investors. A related question is whether disclosure,</p>	<p>Intermediaries and government regulators such as ASIC should have links to standardised educational topics on their websites.</p> <p>Another possibility is requiring investors to sign a document – either physically or electronically – stating that they have read material provided to them on these topics.</p>	<ul style="list-style-type: none"> <li>• Intermediaries and government regulators such as ASIC should have links to standardised educational topics on their websites.</li> </ul>

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alone, would suffice.		
<p><b>Question 8</b> What provision, if any, should be made for each of the following matters as they concern CSEF investors:</p> <p>(i) permitted types of investor: should there be any limitations on who may be a CSEF investor</p> <p>(ii) threshold sophisticated investor involvement (Italy only): should there be a requirement that sophisticated investors hold at least a certain threshold interest in an enterprise before it can make CSEF offers to other investors</p> <p>(iii) maximum funds that each investor can contribute: should there be some form of cap on the funds that an investor can invest. In this context, there are a number of possible approaches under issuer linked caps and under investor linked caps</p> <p>(iv) risk acknowledgement by the investor: should an investor be required to acknowledge the risks involved in CSEF</p> <p>(v) cooling off rights: should an investor have some right of withdrawal</p>	<p>There should be no restrictions on permitted types of investors (see my comments in relation to Question 2).</p> <p>However, unaccredited investors should be protected via the implementation of a restriction that they only invest a certain percentage of their income in a given year through CSEF. This restriction might be waived for high net worth individuals.</p> <p>For close relatives, a higher percentage might apply, as these often invest a greater amount than other investors and are not just driven by commercial considerations.</p> <p>Unaccredited investors should be required to provide a verified statement that they are only investing an amount below the specified threshold. It should not be up to intermediaries to enforce this requirement, as this would unnecessarily increase red tape for intermediaries. In other words, the onus should be on the unaccredited investor to comply with this restriction.</p> <p>Alternatively, a dollar limit upper threshold (for example \$10,000), on investments by any one individual, could be applied to unaccredited investors. The final form the limit might take should be established in consultation with stakeholders.</p> <p>There should not be a requirement that sophisticated investors hold at least a certain threshold interest in an enterprise before it can make CSEF offers to other investors. Sophisticated investors</p>	<ul style="list-style-type: none"> <li>• There should be no restrictions on permitted types of investors.</li> <li>• There should not be a requirement that sophisticated investors hold at least a certain threshold interest in an enterprise before it can make CSEF offers to other investors.</li> <li>• There should be a 10 day cooling off period.</li> <li>• After this 10 day cooling off period, investors should not have the option of withdrawing their investment.</li> <li>• A company's founders should not be permitted to sell their shares within a short timeframe of raising funds via CSEF.</li> <li>• Investors should be required to sign a</li> </ul>

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<p>after accepting a CSEF offer</p> <p>(vi) subsequent withdrawal rights (Italy only): should an investor have some further withdrawal right subsequent to the offer</p> <p>(vii) resale restrictions: should there be restrictions for some period on the on-sale of securities acquired through CSEF</p> <p>(viii) reporting: what ongoing reporting should be made by the intermediary and/or issuers to investors in regards to their investment</p> <p>(ix) losses: what recourse should investors have in relation to losses resulting from inadequate disclosure</p> <p>(x) remedies: what remedies should investor have in relation to losses results from poor management of the enterprise they invest in</p> <p>(xi) any other matter?</p>	<p>typically do not become involved in most businesses at the very early stages, unless the business has the potential to be very profitable and / or is technology-based. Implementing this restriction would therefore result in many businesses not receiving funding.</p> <p>Investors should be required to sign a document – either physically or electronically – acknowledging the risks involved in CSEF and that they understand the terms of their investment. This should be included in the mandatory code of conduct.</p> <p>There should be a 10 day cooling off period. This will foment public trust in the integrity of the regulatory environment for CSEF. However, after this 10 day period has elapsed, investors should not have the option of withdrawing their investment. This would be impractical, as after this cooling off period, the firm use these funds for purposes such as paying salaries, purchasing capital equipment etc, making a refund difficult.</p> <p>A company's founders should not be permitted to sell their shares within a short timeframe of raising funds via CSEF. This would leave investors "high and dry", having invested in an enterprise which now has no management. This should be the only restriction on the on-sale of securities acquired through CSEF.</p> <p>In relation to losses resulting from inadequate disclosure and remedies for losses due to poor management, these should be as per the current treatment of these issues in the Corporations Act.</p>	<p>document – either physically or electronically – acknowledging the risks involved in CSEF and that they understand the terms of their investment.</p> <ul style="list-style-type: none"> <li>• In relation to losses resulting from inadequate disclosure and remedies for losses due to poor management, these should be as per the current treatment of the issues in the Corporations Act.</li> </ul>
<p><b>Question 9</b> Should any</p>	<p>The fifth option posited by the Discussion paper involves the</p>	<ul style="list-style-type: none"> <li>• CAMAC should</li> </ul>

Question	Commentary	NSW Small Business Commissioner's recommendation
<p>accommodation for CSEF in the Corporations Act be in the form of incremental adjustments to the existing provisions, or be in the form of a self-contained regulatory regime for CSEF?</p>	<p>creation of a new, possibly standalone regime for the regulation of CSEF. As mentioned in my comments to Question 2, such a regime would provide benefits for CSEF including:</p> <ul style="list-style-type: none"> <li>• Clarity in the laws and regulations that apply specifically to CSEF;</li> <li>• The ability to make future specific regulatory changes to CSEF laws and avoid any adverse impacts on existing laws for other regulated financial products and securities;</li> <li>• The ability to control the activities of Australian CSEF investors, issuers and intermediaries and determine investor protection measures to be implemented between these parties; and</li> <li>• The ability to collect data on CSEF in Australia and allow for data analysis to measure risk, sector growth, and to allow for better informed and targeted law reform in this rapidly changing area.</li> </ul> <p>I would therefore advocate that this is the option that CAMAC should recommend to Government.</p> <p>However, irrespective of which option for the regulatory arrangements for CSEF is adopted by CAMAC, is essential that excessive compliance and administrative costs are not imposed.</p> <p>For example, onerous licensing requirements for intermediaries and excessive disclosure requirements for companies utilising CSEF would be counter-productive and must not be imposed.</p>	<p>recommend the adoption of a new standalone regime for the regulation of CSEF.</p>

Question	Commentary	NSW Small Business Commissioner's recommendation
	<p>I regard this as being of equal importance as the actual architecture of the regulatory arrangements, such as broadening the current small scale personal offers exemption or a self-contained statutory and compliance structure.</p> <p>The key to effective crowd funding regulation is recognising that crowd funding investors are subject to a higher risk of issuer default because crowd funding issuers are generally not well established. Limiting the risk exposure for participants in CSEF is therefore a key priority. However, CSEF should be governed by different investor protection mechanisms compared to other regulated financial products and securities. A key priority should also be to cultivate CSEF as a vehicle for economic growth and innovation, with appropriate protection for investors, while minimising compliance obligations and liability risks for issuers.</p>	

